

Thursday, February 28, 2008

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., Dr. Chu, Chair, Ms. Yee, Vice Chairwoman, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Gilbert L. Tauberg and Mina Tauberg, 360375

2003, \$7,530.00 Assessment

For Appellant:

Gilbert L. Tauberg, Taxpayer

For Franchise Tax Board:

Susanne Coakley, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown that the Franchise Tax Board improperly denied a claimed net operating loss and that the proposed assessment is erroneous.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Shlomo Erdman and Estate of Galit Erdman, Dec'd., 377404

1996, \$1,397.00 Assessment

1998, \$4,169.00 Assessment

1999, \$5,895.00 Assessment

2000, \$6,026.00 Assessment

2001, \$3,057.00 Assessment

For Appellant:

Dennis L. Perez, Attorney

Michel R. Stein, Attorney

For Franchise Tax Board:

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board has jurisdiction to review respondent's determination that appellant was not eligible to participate in California's amnesty program.

If the Board has jurisdiction under the first question, whether appellant was eligible to participate in California's amnesty program.

Whether, apart from amnesty, appellant is entitled to relief from the accuracy-related penalties.

Appellant's Exhibit: Page six of the Tax Gap Plan of Franchise Tax Board (Exhibit 2.19)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Exhibits to these minutes are incorporated by reference.

Victor E. Andrade Jr., 382910

2003, \$46,468.00 Tax, \$1,126.25 Late Filing Penalty

For Appellant:

Keith A. Shibou, CPA

For Franchise Tax Board:

Natasha Page, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Thursday, February 28, 2008

Issues: Whether appellant's per-capita gaming distribution is taxable by California.
Whether there is reasonable cause for abatement of the late filing penalty.
Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.20)
Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Mia L. Andrade, 355422

Action: This matter was dismissed.

Sajid Batliwala and Rafia Batliwala, 329805

1999, \$2,260.00 Assessment

2000, \$40,910.00 Assessment

For Appellant:

Jilbert Tahmazian, Representative

For Franchise Tax Board:

Raul Escatel, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant failed to report illegal income during 1999 and 2000.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Gregory B. Duro, 354992

2000, \$78,391.00 Assessment

For Appellant:

Gregory B. Duro, Taxpayer

Lydia Turanchik, Attorney

For Franchise Tax Board:

Judy Hirano, Tax Counsel

Jozel Brunett, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board has jurisdiction to consider this appeal.

Whether appellant lived in California, but outside of his Indian reservation, thereby making his per-capita casino revenue taxable in California.

Appellant's Exhibit: Affidavit of Henry Duro (Exhibit 2.21)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

John Tu and Mary Tu, 286420

1997, \$97,215.00 Assessment

David Sun and Diana Sun, 286421

1997, \$97,215.00 Assessment

Kingston Technology Corporation, 288052

1997, \$14,282.00 Claim for Refund

For Appellant:

Christopher Whitney, CPA

For Franchise Tax Board:

Daniel Biedler, Tax Counsel

Thursday, February 28, 2008

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants are liable for an interest charge under California's adoption of Internal Revenue Code section 453A.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.22)

Respondent's Exhibit: Memorandum (Exhibit 2.23)

Action: Upon motion of Dr. Chu, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

James R. Bigger and Jennifer M. Bigger, 377395

2000, \$21,476.00 Assessment

For Appellant: David Miller, CPA

For Franchise Tax Board: Todd Watkins, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellants engaged in a taxable sale transaction by transferring 17,366 shares of MarchFirst, Inc. stock to Derivium Capital, LLC, in exchange for cash pursuant to a "90% Stock Loan" transaction that was documented as a non-recourse loan.

Whether a sale of 17,366 shares of MarchFirst stock by Derivium constituted, for tax purpose, a taxable sale by appellants.

Whether appellants are entitled to non-recognition of gain under Internal Revenue Code section 1058.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 12:30 p.m. and reconvened at 1:30 p.m. with Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Pete Hernandez, 378089

2002, \$1,799.00 Tax, \$69.33 Post-Amnesty Penalty

2003, \$1,606.00 Tax

For Appellant: Giovanni Bellini, Representative

For Franchise Tax Board: Ellen Little, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether respondent properly disallowed various deductions appellant reported on Schedules A and C of his 2002 and 2003 California returns.

Whether this Board has jurisdiction to review respondent's imposition of the post-amnesty penalty.

Action: The Board deferred the hearing to later in the day to assess appellant's new evidence.

Thursday, February 28, 2008

Brett Livingstone Strong, 335565

Margot Strong, 351204

1997, \$13,756.00 Innocent Spouse Relief Requested

1998, \$81,424.00 Innocent Spouse Relief Requested

For Appellant Brett Livingstone Strong:

Brett Strong, Taxpayer

For Appellant Margot Strong:

Margarita Stone, Representative

Margot Strong, Taxpayer

For Franchise Tax Board:

Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown that respondent erred when it denied innocent spouse relief to Margot Strong.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.24)

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board. An oral hearing is to be held only if parties are not in agreement as to this matter.

Ms. Mandel introduced interns of the Controller's Los Angeles office, Charles Lin and Andrew Jones.

Pete Hernandez, 378089 (Continued from earlier in the day.)

Ellen Little, Tax Counsel, Franchise Tax Board, requested additional time to review appellant's new evidence.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the appellant's supporting documents, the Franchise Tax Board's response and provide its recommendation to the Board. An oral hearing is to be held only if parties are not in agreement as to this matter.

Elisabeth J. De Telder-Collins, 389105

2000, \$1,802.00 Claim for Refund

For Appellant:

Elisabeth J. De Telder-Collins, Taxpayer

James Arnold Mattatall, Counsel

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has demonstrated that she is entitled to the claimed refund.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 2.25)

Thursday, February 28, 2008

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Byron Reynolds, 382836

Action: This matter was postponed to May in Culver City.

HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE CLAIM HEARING

Allen J. Klaus, 403737

2005, \$347.50

For Appellant:

No Appearance

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issue: Whether respondent correctly determined that appellant untimely filed his claim and there is no medical incapacity to excuse the filing.

Action: Ms. Steel moved to reverse the action of the Franchise Tax Board. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Dr. Chu, Ms. Yee and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS HELD FEBRUARY 28, 2008

Gilbert L. Tauberg and Mina Tauberg, 360375

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

Shlomo Erdman and Estate of Galit Erdman, Dec'd., 377404

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board, and determined that the Board of Equalization does not have jurisdiction to review a taxpayer's eligibility for amnesty.

Mr. Leonard directed staff to provide a legal discussion of the Board's jurisdictional authority, particularly as it relates to amnesty.

Victor E. Andrade Jr., 382910

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Thursday, February 28, 2008

Sajid Batliwala and Rafia Batliwala, 329805

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Gregory B. Duro, 354992

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board dismissed the appeal for lack of jurisdiction.

John Tu and Mary Tu, 286420

David Sun and Diana Sun, 286421

Kingston Technology Corporation, 288052

Final Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and duly carried, Dr. Chu, Mr. Leonard and Ms. Steel voting yes, Ms. Yee voting no, Ms. Mandel abstaining, the Board reversed the action of the Franchise Tax Board.

James R. Bigger and Jennifer M. Bigger, 377395

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Dr. Chu, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board sustained the action of the Franchise Tax Board.

Elisabeth J. De Telder-Collins, 389105

Final Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Dr. Chu, Ms. Yee, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

The Board adjourned at 2:20 p.m.

The foregoing minutes are adopted by the Board on April 8, 2008.

Note: The following matters were removed from the calendar prior to the meeting: *Larry R. Stieber, 397117; Robert L. Rentto and Carolyn S. Rentto, 266270; and, John H. Vories, 389158.*